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BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

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DOCKET SECTION

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In the Matter of )  
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COMPUTER RESERVATIONS )  
SYSTEM (CRS) REGULATIONS )  
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Docket OST-97-2881 -20

COMMENTS OF  
MICROSOFT CORPORATION

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**COMMENTS OF  
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Microsoft Corporation (“Microsoft”) hereby submits these comments in response to the Advance Notice of Proposed Rulemaking (“Notice”) issued by the Department in this proceeding. *Notice*, 62 Fed. Reg. 47606 (1997). By that Notice, the Department solicited comments on, *inter alia*, whether 14 C.F.R. Part 255 should be amended to extend some or all of the rules, which are currently applicable to airline-controlled systems, to airline information and booking services available to consumers through the Internet.<sup>1</sup>

The Department should not extend the coverage of the rules to Internet travel services at this time—particularly not to independent services such as Expedia, the service owned and operated by Microsoft. From the outset, it is crucial to recognize that Expedia relies upon Worldspan for its data, but decisions regarding display and search

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<sup>1</sup> Divided by ownership, two types of Internet travel services exist—those that are owned or controlled to some degree by an airline, and those that are not. Expedia is an independent Internet travel service. It is not owned or controlled by any airline.



functions are made by Expedia alone. The reason for this is simple—an Internet travel service will thrive only if it provides information to customers in the order and format they want. If the service fails to do so, a competitor is only a click away.

There is no empirical evidence that current or likely future uses of Internet travel services present the possibility of anticompetitive or deceptive effects in the air travel industry. Moreover, the structural characteristics of the Internet make anticompetitive or deceptive behavior at once undesirable and impractical for Internet travel service owners.

#### **I. There is No Historical Premise for Internet Travel Service Regulation**

Regulation of the CRS industry was initially spurred by concern about competition in the airline industry. The initial CRSs were owned by American Airlines and United Airlines. The efficiency and speed that the CRSs added to the booking process—which resulted in more bookings and thus more commissions—soon made those travel agencies that accounted for a high percentage of bookings dependent upon the systems. *Notice*, 62 Fed. Reg. 47606, 47607 (1997); *Computer Reservations System (CRS) Regulations*, 57 Fed. Reg. 43780, 43782 (1992) (“CRS Regulations”) (stating that in 1987, 95 percent of all U.S. agencies used CRSs). And, as travel agents came to depend upon CRSs for most of their bookings, airline competitors of the CRS vendor-owners, themselves dependent upon travel agents for ticket sales, were forced to participate in the systems. *Notice*, 62 Fed. Reg. at 47607.

Because of the owner-airlines’ control of CRS participation (and its effects on competition between airlines) and the owner-airlines’ consequent incentive and ability to



bias CRS displays, the CAB, with the support of the Department of Justice, designed rules to regulate the displays and to promote CRS competition in hopes of reducing control of the dominant CRSs. The 1992 amendments to the rules had the same objectives. *Id.* at 47608 (“[W]e attempted to adopt rules that would promote competition in the CRS industry.”); *CRS Regulations*, 57 Fed. Reg. at 43793 (“We find that CRS rules remain necessary to prevent deception and a substantial reduction in airline competition . . .”). Thus, in reducing bias that could skew consumer purchases of airline tickets, the focus of the rules has always been on competition in the industry the Department regulates—airlines.

One important effect of the growth of the Internet as a tool for booking flights is to ameliorate further any deceptive effects of display bias. As noted *supra*, an Internet travel service like Expedia, though it accesses a CRS for its flight data, configures its display and creates its search algorithms independent from the CRS, with consumer preferences only for its guide. Thus, by enabling consumers to access directly the information they want, Internet travel services essentially eliminate airlines from the booking and ticketing equation, consequently eliminating the opportunity for the airline-owners of CRSs to bias these displays. Internet displays on non-airline sites thus reduce the opportunity for airlines to abuse their ownership position to a degree that may even obviate the need for continued regulation of display bias in airline-controlled systems.

At the very least, the concerns cited by the Department as the statutory basis for continuing the CRS regulations in its last rulemaking on the subject, *id.* at 43789-92—including the antitrust concerns posed by the industry structure and consumer deception



resulting from the symbiotic relationship between vendor-carriers, travel agents, and consumers—have little applicability to Internet travel services. In that rulemaking, the Department concurred with the Department of Justice’s conclusion that, because travel agents tended to subscribe to one CRS only, each CRS was a separate market for air carriers for which there was no acceptable substitute. *Id.* at 43783-84. From this definition of the relevant market flowed the Department’s conclusion that CRS vendors possess monopoly power over carriers that wish to sell tickets in areas where the host CRS had a significant number of travel agents. In addition, the Department characterized each CRS as an “essential facility” for the sale of airline tickets to clients of each travel agent, and also determined that airline ownership of CRSs produced anticompetitive effects in the market for air travel. *Id.* at 43790. *See United Air Lines, Inc. v. Civil Aeronautics Bd.*, 766 F.2d 1107, 1114-15 (7th Cir. 1985) (noting that CAB regulation of CRSs was justified because airlines needed to be listed in the systems of their principal competitors, creating a danger of foreclosing competitors from sources of supply or marketing channels if these “essential facilities” were restricted).

Because the nature of the Internet guarantees an agent or consumer ready access to several travel websites from the same terminal, no Internet travel service could ever qualify as an “essential facility.” The Department recognized that this type of market power is an important prerequisite for regulation when it declined to regulate CRSs not affiliated with airlines because they do not have the ability to use market power to prejudice the competitive position of other airlines. *CRS Regulations*, 57 Fed. Reg. at



43794. Thus, regulation of Internet travel services cannot be justified on the historical competitive grounds.<sup>2</sup>

## **II. There is No Factual Premise for Internet Travel Service Regulation**

The airlines' control of the CRS industry, a control that drove the Department's decision to continue and expand the regulation of that industry in 1992, is absent in Internet travel services. The Internet is the antithesis of a CRS—travel websites such as Expedia are not controlled by any airlines, new ones can sprout readily and cheaply, and the websites offer the displays they believe their customers will want, not the displays the airlines might want. Thus, there is no incentive or opportunity for an independent travel website such as Expedia to affect adversely competition in the market for air travel.<sup>3</sup>

Moreover, even if an Internet travel service creates bias in a display, it would not have an adverse effect on the market for air travel or on consumers. There are a growing number of Internet travel services and their sites will succeed only if they are providing sufficient value for consumers who will, in effect, dictate the content of the display. Consumers select the sites they want based on their perception of the accuracy and

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<sup>2</sup> The problem of unfair competition within the market for reservations systems or services is similarly irrelevant to the Internet travel service systems.

<sup>3</sup> In its most recent rulemaking on the subject of CRSs, *Fair Displays of Airline Services in Computer Reservations Systems (CRSs)*, 62 Fed. Reg. 63837 (1997), the Department rejected American Airlines' and United Air Lines' arguments that Internet travel services have in part eliminated the need for more CRS regulation. Reserving further comment for the rulemaking now under consideration, the Department warned merely that some booking services use a CRS for providing information and transaction capabilities to consumers. *Id.* at 63842 (citing Expedia as an example). As noted throughout these Comments, any implication that underlying CRSs control the manner in which services such as Expedia present information to consumers would be unwarranted. The absence of Internet travel service market power allows consumer preferences, rather than the underlying CRS airline-owner, to dictate the method of information presentation.



suitability of the information provided by each site. The market itself, not unnecessary regulation, is thus acting to protect against the harms of bias. *See United Air Lines*, 766 F.2d at 1115 (the Board's analysis of the need for regulation would be undercut by competition from independent (i.e., non-airline-controlled) systems, but as of 1985 only one small independent system existed).

With regard to both types of Internet travel services—those owned or controlled by airlines, and those that are not—concerns about harm to consumer welfare are similarly unfounded. Consumers using the Internet may easily leave one travel website and move to another if they are unsatisfied with its contents, or if they merely would like to verify that they have received the booking information that best suits their needs. They may also tailor their searches to their particular needs (lowest fare, etc.), so that time spent verifying information provided by another Internet travel service is reduced to a level far below what they would have had to spend in the pre-Internet days to verify the work of travel agents. The danger to consumer welfare that led to regulation of the CRS industry is thus conspicuously absent, even in those cases where an Internet travel service is owned entirely by an air carrier.

The same is true when travel agents use Internet travel services to supplement, or in lieu of, traditional regulated CRSs. By using the Internet, agents may easily switch between travel websites to find one that suits the agent's client's needs, and so they benefit from all of the efficiencies afforded by the Internet search capability that a consumer would enjoy. Although there remains the prospect that an agent will favor a particular airline no matter what information is readily available, the ease of verifying the

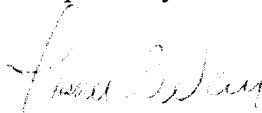


agent's work renders this possibility less likely, and in any event, these incentives exist independent of CRS bias. For this reason, agent bias *per se* has never been a proper subject of CRS regulation. The focus of the rules has always been on reducing the anti-competitive concerns posed by airline dominance of CRSs by ensuring that agents have access to information sufficient to provide clients with the most efficient and competitive travel options. *Notice*, 62 Fed. Reg. at 47608; *CRS Regulations*, 57 Fed. Reg. at 43797. Unregulated Internet travel services fulfill that function. There is no need for intrusive regulation of this valuable tool.

### **III. Conclusion**

For the reasons stated, the circumstances that led to regulation of the airline-controlled CRSs do not exist for Internet travel services. Any display irregularities will quickly be disciplined and corrected by competition. Further regulation is not warranted.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "James R. Weiss", is written over a horizontal line.

James R. Weiss

Rosa Kim

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